Filed 10/30/12 Herrera v. County of Los Angeles CA2/4

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

JONATHAN HERRERA, Plaintiff and Appellant, v. COUNTY OF LOS ANGELES et al., Defendants and Respondents.	B229903 (Los Angeles County Super. Ct. No. KC055247)

APPEAL from a judgment of the Superior Court of Los Angeles County, Peter Meeka, Judge. Reversed in part and Affirmed in part.

Law Offices of Martin L. Stanley, Martin L. Stanley and Jeffrey R. Lamb for Plaintiff and Appellant.

Veatch Carlson, Mark A. Weinstein and Gina Genatempo for Defendants and Respondents.

INTRODUCTION

Plaintiff and appellant Jonathan Herrera, a minor, was bitten by a rattlesnake while he was in custody at a juvenile detention camp operated by the County of Los Angeles. As here relevant, he sued the County and 13 camp employees in their individual capacities for negligence. The trial court sustained demurrers by the County and the individual employees without leave to amend. In this appeal, Herrera challenges only the court's dismissal of his negligence claim against the employees (collectively respondents).

The trial court reasoned that Herrera's negligence cause of action against respondents failed for two independent reasons: first, because it did not allege a statutory basis for the alleged negligence, and second, because the facts alleged would not establish a breach of any particular respondent's duty of care to Herrera.

As explained below, we conclude that the operative complaint states a cause of action against respondents Mikell Ballou and Samuel Rodriguez under Government Code section 840.2,[1] for liability for a dangerous condition of public property. We further conclude that the complaint states a cause of action against respondent supervisors Randy Hebron, Tyrone Perry, Charles Hartacych, and Marcila Chapman, for negligently failing to train camp staff regarding Camp Paige's policy with respect to snake protection. Thus, the demurrer should not have been sustained as to these individuals.

We further hold that the trial court properly sustained the demurrer as to Gerald Espinoza, but leave to amend should be granted. As to the remaining respondents, Burt Todd, Robert Taylor, Richard Saenz, Deputy Barlow, Jack Moreno, and Francesca Jones, the complaint fails to state a cause of action, and Herrera makes no showing as to how he could amend to state a claim under any

---

[1] All undesignated references to code sections are to the Government Code.

theory of negligence, including a failure to protect against a dangerous condition, negligent training of camp staff, or failure to summon medical care.

FACTUAL AND PROCEDURAL BACKGROUND

The Government Tort Claim

On June 28, 2008, Herrera suffered a stroke and paralysis after a rattlesnake bit him on the grounds of Camp Paige Juvenile Facility in La Verne, California. He timely submitted a tort claim to the County of Los Angeles pursuant to section 910. In the claim, he described the incident as follows: "I was at Camp Paige, a juvenile detention facility, when I was bitten by a western diamondback rattlesnake on my right ring finger. The Director and staff had prior knowledge of the snake since 06/27/2008, but did have any antivenom. The Camp had a first aid kit, but it did not contain any antivenom. I finally received treatment for my bite at Pomona Valley Hospital and Loma Linda Medical Center, where I stayed for several days. Because of Camp staff's (in)action, I unnecessarily suffered a stroke and paralysis." In response to the question, "Why do you claim County is responsible?" he alleged: "I was in County juvenile custody at the time of my injury. Camp staff and Director had prior knowledge of the snake's presence in the camp the day before I was bitten, and took no action to remove the snake. Finally, the camp did not have antivenin, even after knowing about the snake." He claimed to have suffered more than $500,000 in damages and anticipated $2.5 million in prospective damages.

The County denied the claim. Its investigation determined that Herrera's damages "did not occur as a result of any action or inaction on the part of the County. Per our investigation, the County took appropriate safety/prevention

measures by displaying warning signs. In addition, staff rendered immediate attention to Mr. Herrera and he was transported for further medical evaluation/attention within minutes of the incident."

The Initial Through Second-Amended Complaints

Herrera filed a complaint in superior court in March 2009 alleging one count of negligence against the County and Does 1 through 20. He alleged that the County and Does 1 through 4 "so negligently maintained and used Camp Paige that they failed to use reasonable care to keep the property of Camp Paige in a reasonably safe condition." He further alleged that they "knew of the existence of the snake on its property and failed to repair the condition, and/or have antivenom serum readily available [at] Camp Paige, even though the condition was reasonably expected to cause harm to others." With respect to all Doe defendants, he alleged that they "were in some way responsible for the injuries suffered by Plaintiff."

The County answered the complaint, and later filed a motion for summary judgment in part based on the immunity granted to public entities for injuries to a prisoner under section 844.6, a doctrine that applies to the County but not County employees.[2] Before the motion was heard, Herrera filed Doe amendments naming 13 County employees: respondents Mikell Ballou, Tyrone Perry, Charles

---

[2] While public entities are granted immunity from liability for an injury to a prisoner (§ 844.6, subd. (a)), public employees are not insulated from liability for prisoner injuries. (*Id.*, subd. (d).) Section 844.6, subdivision (d), expressly provides: "Nothing in this section exonerates a public employee from liability for injury proximately caused by his [or her] negligent or wrongful act or omission." As the court explained in *Hughes v. County of San Diego* (1973) 35 Cal.App.3d 349, 352, "[t]he statute allows prisoners to sue the individual prison officials for their injuries, but prevents suit against the public entity. . . . Because he will be personally responsible for any liability he incurs, the individual prison official may be more cautious in performing his duties. This extra caution might reduce the number of prisoner injuries resulting from official misfeasance."

Hartacych, Marcila Chapman, Randy Hebron, Gerald Espinoza, Jack Moreno, Samuel Rodriguez, Deputy Barlow, Burt Todd, Robert Taylor, Richard Saenz, and Francesca B. Jones.[3]

In February 2010, he amended his complaint a second time to identify alleged wrongful acts by each respondent. The County demurred, and the court dismissed the cause of action for negligence as against the County under section 844.6, a ruling Herrera does not challenge on appeal.

The Operative Third Amended Complaint

The operative complaint for this appeal is the third amended complaint (hereafter the complaint). In support of his claim for negligence against respondents in the complaint,[4] Herrera alleged generally that all respondents "were informed of the presence of a snake on or about June 27, 2008, or should have been so informed," and knew or should have known that the camp was infested with poisonous snakes during the spring and summer. For example, approximately one month prior to the snakebite incident, camp personnel had removed a snake from the camp premises and put it on the other side of the fence, even though the snake could easily reenter the camp. The complaint alleges that Herrera and the other minors housed at the camp were never warned about the dangers of the snakes on the premises.

The complaint specified certain allegedly reasonable steps that respondents should have taken to prevent snakes from being present in a probation camp where

---

[3] In addition, Herrera added federal and state constitutional claims not here relevant.

[4] He also pled a claim under the California constitution against respondents alone, and claims under 42 U.S.C. section 1983 against respondents and the County. He does not challenge the dismissal of those claims, and we do not discuss them further.

minors are housed, such as calling animal services or the nearby Fire Department (which allegedly had expertise in locating and killing rattlesnakes in the area), installing fencing or snake "mesh" to prevent snakes from entering the camp, and/or taking other measures to prevent and protect a minor from being bitten. In addition, the complaint alleged that respondents failed to provide adequate medical procedures for snakebite incidents, including having antivenin serum onsite.

According to the complaint, under camp policy, when a snake was sighted in the camp, the snake's location was to be brought to the supervisor's attention, and the supervisor would direct that the area be searched for the snake. In addition, policy required that the staff and minors be informed of the presence of the snake and the minors were to be advised to stay away from it. Once found, the snake was to be killed by chopping off its head.

However, the complaint alleged that most of the camp staff had never received training with respect to the camp policy and procedures for dealing with snakes and were not informed about the policy. Further, the complaint alleged that respondents generally failed to follow the camp policy and procedures when a snake was sighted, including with respect to the snake that bit Herrera. Instead, when they saw a snake on the grounds, they would simply go in the other direction.

As to Herrera's injury specifically, the complaint alleged that camp staff were notified on June 27, 2008, that a snake had been spotted in the area between the dorm and the administration building. Respondent Deputy Probation Officer Mikell Ballou assigned respondent Samuel Rodriguez, a camp maintenance worker, to look for the snake. However, Rodriguez reported back to Ballou at 2 p.m., the end of Rodriguez's shift, that he was leaving and had not found the snake. No further investigation or other action was taken to locate and remove the snake,

even though other personnel were available. Moreover, although the camp is small in area, other staff were not informed of the snake's presence and no warning was given to minors that a snake could still be present in the area and that they should stay away.

The complaint alleged that the next day, as Camp Paige residents were walking in line, respondent Deputy Probation Officer Barlow pulled Herrera out of the line and directed him to stand at attention in the area where the snake had been seen the day before. According to the complaint, Barlow told the staff and the office to keep Herrera in front of the administration building "although he knew or should have known Plaintiff was standing and or sitting right in the very same area where a snake had been seen the day before." Herrera was bitten by a rattlesnake while standing there as ordered.

Respondent's Demurrer

The trial court sustained respondent's demurrer to the negligence claim without leave to amend. The trial court first concluded that the claim was deficient for failure to allege a statutory basis for the cause of action. As an alternative ground, the court reasoned that although respondents owed Herrera a duty of care because of the special relationship between a jailer and a prisoner, the complaint failed to state facts that, if true, would constitute a breach of any individual respondent's duty to Herrera. The court acknowledged that the complaint alleged that each of the respondents knew or should have known that Herrera was at risk of being bitten by a snake, but ignored or failed to take reasonable measures to protect him. Nonetheless, the court focused on allegations that were specific to each respondent, and concluded that those allegations failed to state a claim for negligence. The court deemed it significant that the complaint alleged that several respondents made some effort to locate the snake, even though they were

ultimately unable to find it. Further, the court concluded that "the fact that several individual defendants may have known generally that rattlesnakes were prevalent in and around Camp Paige is insufficient to show that any particular defendant can be personally liable for failing to take additional precautions, such as giving warnings, or building a wall around the camp to keep rattlesnakes out." The trial court did not specifically address alternative theories of negligence, such as failure to remedy a dangerous condition on public property, negligent training of employees, or the failure to furnish medical care. Because Herrera had already engaged in extensive discovery, and had failed to state what additional facts he could allege if granted leave to amend, the trial court sustained the demurrer without leave to amend. Herrera timely appealed from the resulting order of dismissal.[5]

[5] Herrera has an action still pending in federal district court arising out of the same snakebite incident and naming the same defendants. (*Herrera v. County of Los Angeles*, CV 09-07359 PSG (C.D. Cal.).) Originally, Herrera pleaded both a negligence claim and claims under 42 U.S.C. section 1983 in the federal court case. However, the parties ultimately stipulated to dismissal of the negligence claim so it could be pursued in the instant action. (See *Herrera v. County of Los Angeles* (2010) CV 09-07359 PSG, WL 5313314, fn. 1 (C.D. Cal.). The federal district court granted the defendants' motion to dismiss the remaining section 1983 cause of action as against all defendants, with prejudice. (*Id.*) However, the Ninth Circuit reversed that decision with respect to individual defendant Gerald Espinoza, finding that based on the facts alleged in the complaint a jury reasonably could find that he knew of and deliberately ignored the danger posed by the snake. (*Herrera v. County of Los Angeles* (June 1, 2012) No. 11-55078, 2012 WL 1963521 (9th Cir.).) Trial currently is set for 2013.

DISCUSSION[6]

I. *Standard of Review*

"On appeal from a judgment dismissing an action after sustaining a demurrer without leave to amend, the standard of review is well settled. The reviewing court gives the complaint a reasonable interpretation, and treats the demurrer as admitting all material facts properly pleaded. [Citations.]" (*Aubry v. Tri-City Hospital Dist.* (1992) 2 Cal.4th 962, 966-967.) "We are 'not bound by the trial court's construction of the complaint. . . .' [Citation.] Rather, we independently evaluate the complaint, construing it liberally, giving it a reasonable interpretation, reading it as a whole, and viewing its parts in context. [Citation.] We must determine de novo whether the factual allegations of the complaint are adequate to state a cause of action under any legal theory." (*Milligan v. Golden Gate Bridge Highway & Transportation Dist.* (2004) 120 Cal.App.4th 1, 5-6.)

When the trial court sustained the demurrer without leave to amend, we consider whether the complaint might state a cause of action if the plaintiff were permitted to amend the complaint. The plaintiff bears the burden of demonstrating a reasonable possibility that the defect could be cured by amendment. (*Michael*

---

[6] The corrected appendix filed by Herrera includes the operative third amended complaint, the briefs filed in support of and in opposition to the demurrer, the trial court's ruling on the demurrer, the order of dismissal and notice of appeal, and little else. Respondents filed their own appendix that includes the original complaint as well as the first and second amended complaints, but they request that we dismiss the appeal based on Herrera's failure to provide an adequate record. We decline to do so. (See *Committee To Defend Reproductive Rights v. A Free Pregnancy Center* (1991) 229 Cal.App.3d 633, 639 ["While the defective record appellants have filed provides sufficient grounds to reject their appeal outright [citation], we elect not to do so in this case. The sparse record presented is adequate to consider this appeal on the relatively narrow grounds we will discuss below."].) Further, although Herrera's brief erroneously cites to the trial court's decision rather than the facts in the record, we exercise our discretion to "[d]isregard the noncompliance" pursuant to California Rules of Court, rule 8.204(e)(2)(C).

Leslie Productions, Inc. v. City of Los Angeles (2012) 207 Cal.App.4th 1011, 1019.)

II. *The Negligence Claim Against Respondents Need Not Be Statutorily Based*

As its first basis for sustaining respondent's demurrer, the trial court adopted respondents' argument that Herrera's negligence claim was defective because it failed to allege a statutory basis for the claim. Citing *Haggis v. City of Los Angeles* (2000) 22 Cal.4th 490, 498 (*Haggis*), the court stated that "[a] complaint against a public employee must be statutorily based, and create an obligatory, rather than a discretionary or permissive duty."

The court was mistaken. Although the liability of a public *entity* is confined to specific circumstances set forth in the California Tort Claims Act and all direct liability is based upon statute (§ 815), the liability of public *employees* is not so limited. Rather, "'the general rule is that an employee of a public entity is liable for his torts to the same extent as a private person (§ 820, subd. (a)) and the public entity is vicariously liable for any injury which its employee causes (§ 815.2, subd. (a)) to the same extent as a private employer (§ 815, subd. (b)).' [Citation.]" (*C.A. v. William S. Hart Union High School Dist.* (2012) 53 Cal.4th 861, 868; see *Adams v. City of Fremont* (1998) 68 Cal.App.4th 243, 264-265 ["Public employees are liable for injuries resulting from their acts or omissions to the same extent as private persons, except where otherwise exempted or immunized by law. (§ 820.)"].) The law does not require that a claim for negligence against a public employee be statutorily based.

Haggis, cited by the trial court and relied upon by respondents below and on appeal, does not suggest otherwise. In *Haggis*, the only defendant was the City of Los Angeles; no public employee was named. After the plaintiff's property was damaged by a landslide, he sued the City under section 815.6 for failure to follow

various directives in its own municipal code regarding development of property in landslide zones. (*Haggis*, *supra*, 22 Cal.4th at pp. 496-497.) Section 815.6 provides: "Where a public entity is under a mandatory duty imposed by an enactment that is designed to protect against the risk of a particular kind of injury, the public entity is liable for an injury of that kind proximately caused by its failure to discharge the duty unless the public entity establishes that it exercised reasonable diligence to discharge the duty." The key holding of *Haggis* was that "application of section 815.6 requires that the enactment at issue be *obligatory*, rather than merely discretionary or permissive, in its directions to the public entity; it must *require*, rather than merely authorize or permit, that a particular action be taken or not taken." (*Haggis*, *supra*, 22 Cal.4th at p. 498.)

On its face, section 815.6 applies only to liability on the part of public entities, and *Haggis* does not purport to apply that statute to public employees. In short, Herrera's negligence claim against respondents need not be supported by citation to a specific statute imposing a mandatory duty owed to Herrera.

III. *Theories of Negligence*

The second basis on which the court sustained respondents' demurrer was that the allegations of the complaint were inadequate to state a negligence claim. Herrera contends that his complaint fairly states claims under three different theories of negligence: (1) failure to remedy a dangerous condition created by the snake; (2) inadequate training of camp employees; and (3) failure to institute appropriate medical procedures after Herrera was bitten, including by failing to administer antivenin.

We examine the complaint to determine whether it states a cause of action for negligence against respondents under any of these theories, and, if not, whether

Herrera has met his burden to show a reasonable possibility that the defect can be cured by amendment.

A. *Dangerous Condition of Public Property*

The complaint alleges that respondents were negligent for failure to remedy a dangerous condition of public property – the rattlesnake on the grounds of the juvenile camp. Respondents concede that Herrera's claims principally would arise under such a theory. The trial court, however, did not focus on this theory, and instead analyzed the complaint under a general theory of negligence, focusing on whether the complaint alleged facts that, if true, would amount to a breach of any individual respondent's duty of care to Herrera.

We conclude that under the Tort Claims Act provisions relating to public employees' liability for dangerous conditions of public property (§§ 830, 840.2, 840.4), the complaint adequately alleges a negligence claim against respondents Mikell Ballou and Samuel Rodriguez. As to respondent Gerald Espinoza, the trial court correctly sustained the demurrer, but Herrera should be permitted to amend to plead additional facts already pled in his federal court complaint that would satisfy the special requirements of section 840.2 for liability for a dangerous condition. As to the remaining respondents, the complaint fails to allege facts that would satisfy all the requirements of section 840.2, and leave to amend was properly denied because Herrera failed to demonstrate that he could cure the defects.

1. *Requirements for Liability for a Dangerous Condition*

The Tort Claims Act provides that "[e]xcept as provided in this article, a public employee is not liable for injury caused by a condition of public property." (Gov. Code, § 840.) Section 840.2, in turn, limits public employees' liability as

follows: "An employee of a public entity is liable for injury caused by a dangerous condition of public property if the plaintiff establishes that the property of the public entity was in a dangerous condition at the time of the injury, that the injury was proximately caused by the dangerous condition, that the dangerous condition created a reasonably foreseeable risk of the kind of injury which was incurred, and that . . . [¶] (b) The employee had the authority and it was his responsibility to take adequate measures to protect against the dangerous condition at the expense of the public entity and the funds and other means for doing so were immediately available to him, and he had actual or constructive notice of the dangerous condition under Section 840.4 a sufficient time prior to the injury to have taken measures to protect against the dangerous condition."

The Tort Claims Act further defines "public property" as including "real or personal property owned or controlled by the public entity." (§ 830, subd. (c).) "Dangerous condition" means a condition of property that creates a substantial risk of injury when such property is used with due care in a manner in which it is reasonably foreseeable that it will be used. (§ 830, subd. (a).) Section 840.4 defines actual and constructive notice as follows: "(a) A public employee had actual notice of a dangerous condition within the meaning of subdivision (b) of Section 840.2 if he had actual personal knowledge of the existence of the condition and knew or should have known of its dangerous character. [¶] (b) A public employee had constructive notice of a dangerous condition within the meaning of subdivision (b) of Section 840.2 only if the plaintiff establishes (1) that the public employee had the authority and it was his responsibility as a public employee to inspect the property of the public entity or to see that inspections were made to determine whether dangerous conditions existed in the public property, (2) that the funds and other means for making such inspections or for seeing that such inspections were made were immediately available to the public employee, and

(3) that the dangerous condition had existed for such a period of time and was of such an obvious nature that the public employee, in the exercise of his authority and responsibility with due care, should have discovered the condition and its dangerous character."

"'The existence of a dangerous condition is ordinarily a question of fact but "can be decided as a matter of law if reasonable minds can come to only one conclusion."' [Citation.]" (*Mixon v. Pacific Gas & Electric Co.* (2012) 207 Cal.App.4th 124, 131.)

2. *The Rattlesnake As a Dangerous Condition*

Based on the allegations of the complaint, the presence of the rattlesnake that bit Herrera constituted a "dangerous condition of public property." Our holding is informed by *Arroyo v. State of California* (1995) 34 Cal.App.4th 755 (*Arroyo*), which considered the liability of the state for damages caused when a mountain lion mauled a child who was hiking in a state park. The appellate court concluded that the state was immune from liability under section 831.2, which provides that "[n]either a public entity nor a public employee is liable for an injury caused by a natural condition of any unimproved public property, including but not limited to any natural condition of any lake, stream, bay, river or beach." Noting that section 831.2 is an exception to the general rule that public entities are liable for injuries resulting from known dangerous conditions of its property, the court addressed an issue of first impression: whether a wild animal constitutes a "natural condition" of the park within the meaning of section 831.2, or whether the statute is instead limited to physical conditions of land. (*Arroyo, supra*, 34 Cal.App.4th at p. 761.)

The court concluded that wild animals indeed constitute a "natural condition" of unimproved property for purposes of section 831.2. (*Arroyo, supra*,

34 Cal.App.4th at p. 762.) The court reasoned as follows: Section 830, subdivision (c), defines "public property" to include not only real property, but also "personal property owned or controlled by the public entity." Under California law, wild animals constitute personal property owned by the state. (*Arroyo, supra*, 34 Cal.App.4th at p. 762, citing *Ex parte Maier* (1894) 103 Cal. 476, 483, and *Betchart v. Department of Fish & Game* (1984) 158 Cal.App.3d 1104, 1106.) Therefore, they must be considered a "natural condition" under section 831.2.

Our case does not concern section 831.2 or implicate its underlying policy goal of alleviating the burden and expense of keeping state parks and other unimproved public property in a safe condition that would likely cause many public entities to close such areas to public use. (*Arroyo, supra*, 34 Cal.App.4th at p. 761.) Nonetheless, the same statutory definitions apply to section 840.2 as to section 831.2. Under these definitions, a rattlesnake on the camp premises is a "condition of public property" that is inherently dangerous. Indeed, respondents do not contend that Herrera fails to allege the existence of a dangerous condition (the snake), that his injuries were proximately caused by the snake, or that the presence of the snake on the camp premises created a reasonably foreseeable risk of the kind of injury he suffered.

3. *Actual or Constructive Notice*

To be liable for injuries caused by a dangerous condition on public property, a public employee must have actual or constructive notice of the condition. (§ 840.2, subd. (b).) Respondents contend that the complaint fails to sufficiently allege that each of them had such notice. The complaint includes particularized notice allegations as to some respondents, but not others. However, the complaint generally alleges that all defendants "knew or should have known that snakes were

a substantial problem and/or were present in or about this area and that minors were present in the camp," and "[d]efendants knew or should have known that Plaintiff Herrera was at risk of being bitten by a snake."

Such general allegations of notice are sufficient to withstand a demurrer. (*Delta Farms Reclamation Dist. v. Superior Court* (1983) 33 Cal.3d 699, 711-712 (*Delta*).) In *Delta*, a complaint was brought against a public reclamation district, after two teenage girls drowned in a canal owned by the district. The district demurred to the cause of action under section 835, which sets forth the liability of a public entity for a dangerous condition of public property. (*Delta, supra,* 33 Cal.3d at p. 711.) Like section 840.2, which pertains to public employees, section 835 provides for liability when the public entity had "actual or constructive notice of the dangerous condition under Section 835.2 a sufficient time prior to the injury to have taken measures to protect against the dangerous condition." Section 835.2 provides that "[a] public entity had actual notice of a dangerous condition within the meaning of subdivision (b) of Section 835 if it had actual knowledge of the existence of the condition and knew or should have known of its dangerous character." In *Delta*, the complaint alleged that the district "'knew or should have known of the dangerous condition of the waterway known as Middle River.'" (*Delta, supra*, 33 Cal.3d at p. 712.) The Supreme Court held that this general allegation was sufficient to plead actual notice by the district under section 835.2, and thus the complaint stated a cause of action against the district for a dangerous condition of property. (*Delta, supra*, 33 Cal.3d at p. 712.)

Section 840.4 defines actual notice in terms very similar to section 835.2: a public employee had actual notice of a dangerous condition "if he had actual personal knowledge of the existence of the condition and knew or should have known of its dangerous character." (§ 840.4, subd. (a).) The only difference between the definitions in section 840.4 and 835.2 is that 835.2 requires that public

employees must have "personal" knowledge, a requirement that would not make sense to impose on an entity. Under *Delta*, the allegations in Herrera's complaint that all respondents knew or should have known that snakes were a substantial problem at the camp and knew or should have known that Herrera was at risk of being bitten by a snake are sufficient to plead actual notice by each respondent named in the complaint.

4. *Authority and Responsibility To Take Preventative Measures and Availability of Such Measures*

Respondents also contend that Herrera failed to plead that each respondent "had the authority and it was his responsibility to take adequate measures to protect against the dangerous condition at the expense of the public entity and the funds and other means for doing so were immediately available to him." (§ 840.2, subd. (b).)

Herrera's complaint asserts that a number of remedial measures should have been taken either to prevent snakes from infesting the grounds of the camp or to remedy or reduce the danger posed to minors by the particular snake that bit Herrera after it was spotted on June 27, 2008. Section 840.2 encompasses both types of measures: the phrase "protect against the dangerous condition" is defined to include "repairing, remedying or correcting a dangerous condition, providing safeguards against a dangerous condition, or warning of a dangerous condition." (§ 830, subd. (b).)

According to Herrera, safeguards that allegedly should have been taken to prevent snakes from entering the camp grounds include installing a wall, fencing or snake "mesh," and hiring exterminators. Protective measures that should have been taken once a snake was spotted include calling animal services or the nearby

Fire Department to remove the snake and/or assigning camp personnel to locate the snake and kill it.

In addition, Herrera alleges that minors generally should have been warned about the dangers from snakes on the premises, and that once the offending snake was spotted, staff and minors should have been informed of the presence of the snake and the minors should have been advised to stay away from the area.[7]

a. *Respondents Todd, Taylor, and Saenz*

The complaint adequately alleges that Todd (Doe 10), Chief Probation Officer Taylor (Doe 11), and Saenz (Doe 12) had authority and responsibility to implement measures to keep snakes from entering the camp. However, respondents correctly contend that the complaint fails to allege that these particular respondents had immediately available to them the funds or other means for implementing the above-described protective measures.

As to Todd, the complaint alleges that he was the direct supervisor of the general service managers and also supervised the company that was subcontracted to act as an exterminator for the Camp Paige grounds. The complaint further alleges that Todd was in charge of making recommendations with regard to snake prevention and protection, including the authority to develop specifications to aid in snakebite prevention, such as a block wall, and to put out such specifications for a bid. Similarly, the complaint pleads that Taylor had the authority and responsibility to order screening, a block wall, or other snakebite protection

[7] Herrera also alleges that, to protect a minor in the event of a snakebite, the defendants should have set up adequate medical procedures for dealing with a snakebite, including having antivenin on the premises. However, this allegation falls within Herrera's alternative theory of liability for failure to provide adequate medical assistance, the subject of section 845.6, and discussed further below.

measures. Concerning Saenz, the complaint alleges that, as a bureau chief, he had responsibility for developing the specification for a block wall and other measures to aid in snakebite prevention. The complaint thus sufficiently alleges that these three defendants had the requisite authority and responsibility to take adequate measures to protect against a snake infestation at the camp. (§ 840.2, subd. (b).)

On the other hand, the complaint does not plead that "the funds and other means" for installing a wall, fence, or snake mesh, or hiring the extermination company to take other measures to eliminate the risk of snakes, were "immediately available" to Todd, Taylor, and Saenz. (§ 840.2, subd. (b).) Nor has Herrera satisfied his burden of demonstrating that he could cure this defect if given an opportunity to amend his complaint. (*Michael Leslie Productions, Inc. v. City of Los Angeles*, *supra*, 207 Cal.App.4th at p. 1019.) Therefore, the demurrer was properly sustained and the trial court did not abuse its discretion in denying leave to amend as to the above respondents.

b. *Respondents Ballou, Rodriguez, Espinoza, Barlow, and Moreno*

Under the allegations of the complaint, the liability of respondents Ballou (Doe 1), Rodriguez (Doe 8), Espinoza (Doe 6), Barlow (Doe 9), and Moreno (Doe 7) for a dangerous condition of public property relates to preventative measures concerning the particular snake that allegedly bit Herrera. We conclude that the complaint adequately pleads a cause of action under section 840.2 as to Ballou and Rodriguez, and thus the trial court should not have sustained the demurrer as to them. As to Espinoza, the trial court properly sustained the demurrer, but we conclude that Herrera should be granted leave to amend based on his counsel's assertions at oral argument regarding additional facts that reasonably may be alleged as to Espinoza. However, as to Barlow and Moreno, the court properly sustained the demurrer without leave to amend, because Herrera has not

demonstrated that there is a reasonable possibility that he could cure the defects in his complaint with respect to these respondents' authority, responsibility, and immediately available means to protect against the snake.

(i) *Ballou*

The complaint alleges that Ballou, a Deputy Probation Officer, was acting supervisor at the time the snake bit Herrera. He knew that snakes were normally present on the camp premises during the summer and was aware that camp policy provided that when camp personnel sighted a snake, they were supposed to bring it to the supervisor's attention, and then the snake was supposed to be located and killed. On June 27, 2008, Ballou was notified that a snake had been spotted on the ground in the area between the dorm and the administration building. He assigned Rodriguez, one of the maintenance staff routinely called upon to dispose of snakes on the premises, to look for the snake. At the end of Rodriguez's shift at 2 p.m. that day, Rodriguez reported to Ballou that he had not found the snake and that he was leaving. Ballou did not assign anyone else to look for and dispose of the snake, even though other personnel were available to do so. No warning was given to the minors that the snake was potentially on the premises, and no other action was taken to protect the minors from the snake.[8]

The complaint thus adequately pleads that Ballou, as acting supervisor, had the authority and responsibility to take corrective action once the snake was seen

[8] Respondents suggest that the third amended complaint filed in the federal action on October 12, 2010, contains allegations that additional protective measures were taken after the snake was spotted. However, there is no indication that any party asked the trial court to take judicial notice of the allegations of that complaint prior to the trial court's ruling on the demurrer on October 29, 2010. Thus, that federal complaint is not properly part of the record and we may not consider whether any of its allegations contradict allegations in the state court complaint.

on the property, and pleads that he had immediately available to him the means of instituting protective measures, including assigning additional camp personnel to look for the snake and issuing warnings that that the snake had not been found and could still be on the premises. Therefore, the demurrer should have been overruled as to Ballou.

(ii) *Rodriguez*

Concerning Rodriguez, the complaint alleges that he was a maintenance worker responsible for catching snakes on the premises who was assigned to look for the snake in question. The complaint further alleges that in fact he ignored the presence of the snake, and made no attempt to search for it or take other preventative measures. Elsewhere, the complaint is inconsistent in alleging, on the one hand, that Rodriguez did not inform camp residents or staff that he had not found the snake and was not looking for it, but on the other that Rodriguez reported to Ballou at the end of his shift at 2 p.m. that he was leaving and had not found the snake. Despite this contradiction, the complaint otherwise adequately alleges that it was Rodriguez's responsibility and that he had the means to look for the snake on June 27, 2008, and that despite being assigned to find the snake, he failed to undertake such a search during his shift. Thus, the complaint adequately states a claim against Rodriguez under section 840.2 and the demurrer should not have been sustained as to him.

(iii) *Espinoza*

On the other hand, the allegations in the complaint are insufficient to state a claim against Espinoza (Doe 6), a Deputy Probation Officer II. While the complaint alleges that *on past occasions* Espinoza ignored the presence of snakes at the camp, it does not allege that he was on duty or otherwise had the

responsibility or means to take measures to remove the particular snake that bit Herrera, or to warn Herrera and the other minors of its possible presence. At oral argument, Herrera's counsel represented that the complaint could be amended to include allegations with respect to Espinoza that are already included in the operative complaint in the federal case. Specifically, counsel asserted that allegations could be added that at the time of the snakebite incident, Espinoza was sitting in the office adjacent to the area where Herrera had been ordered to stand; that Espinoza was notified that a snake was present nearby Herrera; and that he nonetheless failed to warn Herrera about the snake, or to direct him to move from the area, even though he was the probation officer on duty who could have done so. Thus, although the demurrer was properly sustained as to Espinoza, Herrera should be granted leave to amend the complaint to specifically add such facts, which, if proven, would likely satisfy the requirement that Espinoza had the authority, responsibility, and immediate ability to order Herrera to leave the area in which he had previously been ordered to stand, and/or to warn him about the snake.

(iv) *Barlow*

As to Deputy Probation Officer Barlow,[9] the complaint alleges that he "was involved in pulling Plaintiff out of the line the Camp Paige residents were walking in after exercising. Deputy Barlow instructed Plaintiff to stand at attention in the area where the snake had been seen. Deputy Barlow told the staff and the office to keep Plaintiff in front of the administration building although he knew or should have known Plaintiff was standing or sitting right in the very same area where a snake had been seen the day before." The complaint fails to state a claim as to

[9] The complaint does not provide a first name for Deputy Barlow.

Barlow because it does not allege that he had the authority and responsibility, or the immediately available means, to take measures to protect against the snake. Further, because Herrera failed to offer specific facts that he would plead to cure these defects, he has not demonstrated that it was an abuse of discretion to deny him leave to amend the complaint.

(v) *Moreno*

The complaint alleges that Moreno, a camp maintenance worker, previously had been called to remove snakes at Camp Paige, including one seen on the premises a month before the snakebite incident. However, the complaint does not allege that he was on duty around the time of the snakebite incident or otherwise bore the responsibility for looking for and disposing of the snake that bit Herrera or for warning staff and minors. Thus, the allegations against Moreno are not sufficient to state a claim against him under section 840.2, and Herrera has failed to demonstrate how he could cure the pleading deficiencies. Accordingly, the trial court properly sustained the demurrer as to Moreno without leave to amend.

c. *Inapplicability of Immunity For Discretionary Acts*

Respondents contend that, as a matter of law, they are immune from liability for failing to take protective steps. They rely on section 820.2, which provides that a public employee is not liable for an act or omission that was "the result of the exercise of the discretion vested in him." The trial court did not agree, and neither do we.

Section 820.2 confers immunity only with respect to those "'basic policy decisions' which have been committed to coordinate branches of government, and

does not immunize government entities from liability for subsequent ministerial actions taken in the implementation of those basic policy decisions." (*Lopez v. Southern Cal. Rapid Transit Dist.* (1985) 40 Cal.3d 780, 793 (*Lopez*).) In order "to avail itself of the discretionary immunity provided by section 820.2, a public entity must prove that the employee, in deciding to perform (or not to perform) the act which led to plaintiff's injury, *consciously exercised discretion* in the sense of assuming certain risks in order to gain other policy objectives. '[T]o be entitled to immunity the state must make a showing that such a policy decision, consciously balancing risks and advantages, took place. The fact that an employee normally engages in "discretionary activity" is irrelevant if, in a given case, the employee did not render a considered decision.' [Citation.]" (*Lopez, supra*, 40 Cal.3d at p. 794.)

In determining the applicability of section 820.2 for purposes of demurrer, we look only to the allegations of the complaint or matters which can be judicially noticed. On the basis of the complaint, immunity is not available to respondents Ballou, Rodriguez, or Espinoza. Their alleged omissions in failing to take appropriate protective measures once a snake was spotted on the camp premises, including locating and removing the snake and/or warning the staff and minors about the snake, are alleged to contravene the camp's policy for dealing with snakes on the premises. We have been pointed to no judicially noticeable facts that suggest otherwise. Therefore, section 820.2 does not apply. (*Adams v. City of Fremont, supra,* 68 Cal.App.4th at p. 316 [conduct which violates policy of public entity cannot fall within immunity for discretionary acts section 820.2].)[10]

---

[10] In addition, although respondents argue that section 845.2 grants a public employee immunity for failure to provide sufficient jail equipment, personnel or facilities, such immunity does not apply if a dangerous condition is established. (§ 845.2; see Sen. Legis. Committee com., reprinted at 32 West's Ann. Gov. Code, foll § 845.2, p. 457; *Taylor v. Buff* (1985) 172 Cal.App.3d 384, 387.)

d. *Sufficiency of the Tort Claim*

Respondents contend that the sustaining of the demurrer alternatively should be affirmed because the claims in Herrera's complaint are not reflected in his administrative tort claim. We conclude that the surviving claims in the complaint are reasonably encompassed in that tort claim.

Herrera's tort claim stated (in pertinent part) that "[c]amp staff and Director had prior knowledge of the snake's presence in the camp the day before I was bitten, and took no action to remove the snake." The claim also stated, "Because of Camp staff's (in)action, I unnecessarily suffered a stroke and paralysis." The County's response to the claim stated, in pertinent part, that Herrera's damages "did not occur as a result of any action or inaction on the part of the County. Per our investigation, the County took appropriate safety/prevention measures by displaying warning signs."

Under the Tort Claims Act, before any civil complaint for money or damages may be filed, "'[e]ach theory of recovery against the public entity must have been reflected in a timely claim. In addition, the factual circumstances set forth in the claim must correspond with the facts alleged in the complaint. [Citation.]' [Citation.] The aim of the tort claim statutes is to provide sufficient information to enable the public entity to investigate claims and settle, if appropriate, without the expense of litigation, and to take the potential claim into account in fiscal planning." (*Castaneda v. Department of Corrections & Rehabilitation* (2012) 207 Cal.App.4th 1488, 1495-1496 (*Castaneda*); see *Smith v. County of Los Angeles* (1989) 214 Cal.App.3d 266, 280 ["'So long as the policies

of the claims statutes are effectuated, [the claim] should be given a liberal construction to permit full adjudication on the merits.'"].)

"'[A] claim need not contain the detail and specificity required of a pleading, but need only "fairly describe what [the] entity is alleged to have done." [Citations.] As the purpose of the claim is to give the government entity notice sufficient for it to investigate and evaluate the claim, not to eliminate meritorious actions [citation], the claims statute "should not be applied to snare the unwary where its purpose has been satisfied" [citation].' [Citation.] To be fortified against a demurrer, the complaint should allege the factual basis for recovery that fairly reflects the written claim." (*Castaneda*, *supra*, 207 Cal.App.4th at p. 1497.)

Respondents rely on *Turner v. State of California* (1991) 232 Cal.App.3d 883, in which the tort claim alleged a failure to warn of or take adequate precautions against anticipated gang violence and reckless conduct of security officers in firing a shot which hit the plaintiff; the complaint then included an allegation of inadequate lighting. (*Id.* at pp. 888-889.) The court concluded that the allegations regarding a dangerous condition caused by inadequate lighting were based on a different set of facts that were not stated in the tort claim. (*Ibid.*)

Turner is inapposite. This is not a case in which the complaint alleges material factual variances from the basis of the tort claim. As has been noted in decisions distinguishing *Turner*, "[i]n other cases, courts have found that apparent differences between the complaint and the claim were merely the result of a plaintiff's addition of factual details or additional causes of action. This type of variance is not fatal where the basic facts are set out in the claim." (*Stevenson v. San Francisco Housing Authority* (1994) 24 Cal.App.4th 269, 277.) An example is *Blair v. Superior Court* (1990) 218 Cal.App.3d 221, in which the claim form asserted that injuries were caused by the "[n]egligent maintenance and construction of highway surface," while the complaint alleged that the injury resulted from the

lack of guard rails, slope of the road, and failure to warn. (*Id.* at p. 223.) The court concluded that "the claim and the complaint in this action are premised on essentially the same foundation, that because of its negligent construction or maintenance, the highway at the scene of the accident constituted a dangerous condition of public property." (*Id.* at p. 226.)

Here, the claim form, which alleges "Camp staff's (in)action" and camp staff's failure to remove the snake as bases for Herrera's claim, sufficiently reflects the claims in the complaint against Ballou, Rodriguez, and Espinoza for their failure to take sufficient action to locate and remove the snake, warn Herrera about the snake, and/or direct him away from it. The additional factual details alleged against each of these respondents simply expand on the heart of the tort claim: respondents' inaction in the face of the threat from a poisonous snake. As such, the trial court properly refused to sustain the demurrer based on the asserted limitations of the tort claim.

8. *Summary of Negligence Claim for Dangerous Condition of Public Property*

We conclude that the complaint states a cause of action against Ballou and Rodriguez under section 840.2. Thus, we reverse the order granting the demurrer as to these respondents.

We hold the demurrer was properly sustained as to the Todd, Taylor, Saenz, Barlow, Moreno, and Espinoza. The demurrer was correctly sustained with prejudice as to all these respondents, with the exception of Espinoza. As to Espinoza, leave to amend should be granted to provide Herrera an opportunity to plead facts demonstrating that he had the authority and responsibility and the immediately available means to order Herrera to move from the area where the snake was present and/or to warn him about the snake.

We further conclude that neither the immunity for discretionary acts under section 820.2 nor the scope of Herrera's administrative tort claim provides an alternative basis for upholding the grant of the demurrer without leave to amend as against respondents Ballou, Rodriguez, and Espinoza.

B. *Negligent Training*

We now turn to a second negligence theory on which Herrera contends that his complaint is sufficient: negligent training. According to the complaint, camp supervisors failed to inform and train Camp Paige staff regarding the camp policy requiring that once a snake was sighted, its location was supposed to be brought to the attention of the supervisor, who would direct that the area be searched for the snake. In addition, policy required that the staff and minors be informed of the presence of the snake and the minors be advised to stay away from it. Once found, the snake was supposed to be killed by chopping off its head. The complaint alleged that a number of the respondents (Espinoza, Ballou, and others) were not informed about the policy and had never received training with respect to the camp policies and procedures for dealing with snakes.

We conclude that the complaint states a claim against Randy Hebron (Doe 5), the director of Camp Paige, as well as supervisors Tyrone Perry (Doe 2), Charles Hartacych (Doe 3), and Marcila Chapman (Doe 4), under a negligent training theory. Specifically, the complaint alleges that Hebron never had any discussions with the camp's maintenance crew or juvenile crew instructors about the policy despite being the camp director and knowing of the snake infestation. The complaint further alleges that supervisors Perry, Hartacych, and Chapman never informed acting supervisor Ballou about the camp's snake policy or provided training. The complaint further alleges that respondents owed Herrera a duty to

take reasonable measures to protect him and that their inaction proximately caused Herrera's injuries.

Respondents deny that the camp supervisors had a duty to protect the minors from snakes at the camp. It is true that generally "[a] person who has not created a peril is not liable in tort merely for failure to take affirmative action to assist or protect another." (*Williams v. State of California* (1983) 34 Cal.3d 18, 23 (*Williams*).) An exception applies, however, when there is a "special relationship" between a plaintiff and a defendant, i.e., where "'the plaintiff is particularly vulnerable and dependent upon the defendant who, correspondingly, has some control over the plaintiff's welfare.'" (*Jennifer C. v. Los Angeles Unified School Dist.* (2008) 168 Cal.App.4th 1320, 1328 (*Jennifer C.*); see *Williams, supra,* 34 Cal.3d at p. 23.) In this event, the defendant owes the plaintiff a special duty of care. (*Williams, supra,* 34 Cal.3d at p. 23.)

In *Giraldo v. Department of Corrections & Rehabilitation* (2008) 168 Cal.App.4th 231 (*Giraldo*), the Court of Appeal held that "there is a special relationship between jailer and prisoner which imposes a duty of care on the jailer to the prisoner." (*Id.* at pp. 252-253.) This holding reflects a well-settled principle of law. (See, e.g., Rest.2d Torts, § 320, com. d ["[o]ne who has taken custody of another may not only be required to exercise reasonable care for the other's protection when he knows or has reason to know that the other is in immediate need of it, but also to make careful preparations to enable him to give effective protection when the need arises, and to exercise reasonable vigilance to ascertain the need of giving it."]; 60 Am.Jur.2d (2003) Penal and Correctional Institutions, § 181 ["A jailer . . . owes a duty to the prisoner to keep him safe, to protect him from unnecessary harm, and to exercise reasonable and ordinary care for the

prisoner's life and health"]. The minors at Camp Paige constitute "prisoners" for purposes of assessing the duty owed to them by the supervisors at the camp.[11]

Although respondents seek to distinguish *Giraldo* on the ground that it specifically concerned the duty to protect a prisoner from foreseeable harm from a *third party*, this distinction is not a meaningful one in the present context. As one court aptly put it, "'[i]f the state puts a man in a position of danger from private persons and then fails to protect him . . . it is as much an active tortfeasor as if it had thrown him into a snake pit.'" (*O'Dea v. Bunnell* (2007) 151 Cal.App.4th 214, 220, citing *Walker v. Rowe* (7th Cir. 1986) 791 F.2d 507, 511.) "'The state must protect those it throws into snake pits'" (*O'Dea v. Bunnell, supra,* 151 Cal.App.4th at p. 221), whether those pits be literal or figurative. Moreover, in this case the camp population was made up of minors, which only reinforces the conclusion that the camp supervisors had a duty to take reasonable measures to ensure the safety of their charges. (See *Jennifer C., supra,* 168 Cal.App.4th at p. 1328 [duty of care owed by school employees to school children].) Thus, the complaint states a cause of action for negligent training of employees, as to the respondent supervisors who allegedly failed to inform and train camp employees regarding the policies for dealing with snakes.

Further, Herrera's administrative tort claim can be fairly interpreted to encompass his negligent training theory of liability. Herrera's negligent training theory asserts that the failure of the camp staff to take action in response to the threat posed by the snake, about which he complained in the tort claim, was in part due to the fact that they had not been trained regarding what to do in the event a

---

[11] Any person under the custody of a probation officer or any peace officer in a county juvenile hall, or committed to a county juvenile ranch, camp, forestry camp, or regional facility, who escapes or attempts to escape is guilty of a misdemeanor. (Welf. & Inst. Code, § 871.)

snake was spotted on the premises. Thus, the theory is based on the factual basis alleged in the tort claim. We hold that the complaint states a negligence claim against respondent supervisors Hebron, Perry, Hartacych, and Chapman for their failure to train employees regarding camp policies pertaining to snakes on the premises, and the demurrer to the negligence cause of action should have been overruled as to these respondents.

C. *Failure To Furnish Appropriate Medical Care*

Herrera further contends that his complaint adequately pleads a cause of action for failure to provide medical care after he was bitten by the snake, because camp employees failed to provide adequate medical procedures, including administering antivenin. He generally asserts that all respondents ignored and failed in their duty to provide such procedures, and specifically alleges that Francesca Jones (Doe 13), who was the Bureau Chief at the Los Angeles County Probation Department, was responsible for providing support services needs of the juvenile camps, including first aid kits that contained proper supplies, and responsible for ensuring that emergency procedures were followed by probation department employees. We hold that Herrera's complaint fails to state a claim under this theory of negligence as to all respondents, because section 845.6 grants them immunity with respect to the adequacy of the medical care provided to Herrera.

Section 845.6 states in relevant part: "Neither a public entity nor a public employee is liable for injury proximately caused by the failure of the employee to furnish or obtain medical care for a prisoner in his custody; but, except as otherwise provided by Sections 855.8 and 856 [concerning mental illness and addiction], a public employee, and the public entity where the employee is acting within the scope of his employment, is liable if the employee knows or has reason

to know that the prisoner is in need of immediate medical care and he fails to take reasonable action to summon such medical care." (§ 845.6; see *Castaneda, supra,* 207 Cal.App.4th at p. 1505.)[12]

In their recent decision in *Castaneda,* our colleagues in Division Three persuasively analyzed the scope of liability under section 845.6 and found it to be quite narrow. They carefully dissected the provision as follows: "The first clause of section 845.6 establishes the immunity generally of both the public entity and its employees from liability 'for injury proximately caused by the failure of the employee to *furnish or obtain medical care* for a prisoner in his custody.' (Italics added.) The second phrase creates a limited . . . liability when: (1) the public employee 'knows or has reason to know [of the] need,' (2) of '*immediate* medical care,' and (3) 'fails to take reasonable action to *summon* such medical care.' (§ 845.6, italics added.)" (*Castaneda, supra,* 207 Cal.App.4th at p. 1505.)

The court concluded that "[s]ection 845.6 is very narrowly written to authorize a cause of action . . . [based on public] employees' failure to summon immediate medical care only, not for certain employees' malpractice in providing that care. The 1963 Law Revision Commission comments to section 845.6 clarify, 'This section limits the duty to provide medical care for prisoners to cases where there is actual or constructive knowledge that the prisoner is in need of immediate medical care. *The standards of medical care to be provided to prisoners involve basic governmental policy that should not be subject to review in tort suits for damages*.' (Cal. Law Revision Com. com., 32 West's Ann. Gov. Code (1995 ed.)

---

[12] Although public entities can be directly liable for the failure to summon medical care to the same extent as public employees under section 845.6, the operative complaint only pleads the cause of action against the individual respondents, and not against the County. Herrera does not challenge the trial court's earlier order sustaining the County's demurrer to the second amended complaint with prejudice as to this cause of action.

§ 845.6, p. 459, italics added.) Thus, section 845.6 creates out of the general immunity a limited cause of action against a public entity for its employees' failure to *summon* immediate medical care only. [Citation.] The statute does not create liability of the public entity for malpractice in furnishing or obtaining that medical care." (*Castaneda, supra,* 207 Cal.App.4th at p. 1505.)

The court further concluded that "[a] narrow reading of section 845.6 is also compelled as a matter of statutory interpretation. First, the duty to summon is presented as the exception to the broad, general immunity for failing to furnish or provide medical care. Second, section 845.6 imposes the duty to summon on 'public employees' generally, not medical care providers in particular. Many such public employees are '[p]rison authorities [who] do not have the medical training to know whether a prisoner's medical condition has been properly diagnosed and treated.' [Citation.] The Legislature could not have contemplated imposing a duty to do more than to *summon* medical care as it imposed that duty on 'public employees,' such as prison authorities, generally." (*Castaneda, supra,* 207 Cal.App.4th at p. 1506, fn. omitted.)

Thus, the court held in pertinent part that "section 845.6 neither encompasses a duty to provide reasonable medical care, nor includes a concomitant duty to assure that prison medical staff properly diagnose and treat the medical condition." (*Castaneda, supra*, 207 Cal.App.4th at p. 1507; see *Watson v. State of California* (1993) 21 Cal.App.4th 836, 841-843; *Nelson v. State of California* (1982) 139 Cal.App.3d 72, 80-81.)

In the instant case, Herrera's complaint does not allege that respondents failed to summon medical care. Rather, it alleges only that the medical procedures were inadequate, including the failure to administer antivenin. These allegations go to the reasonableness of the medical care provided, and do not amount to an allegation that respondents failed to summon medical care. As such, Herrera's

claim for failure to provide medical care fails to satisfy the narrow exception to immunity under section 845.6, and thus the trial court properly sustained a demurrer to the claim for lack of medical care as to all respondents. Moreover, because the allegations in the complaint as to respondent Jones reasonably fall under this theory alone, she was appropriately dismissed as a defendant.[13]

IV. *Claims Relate Back to Original Complaint*

Respondents contend that the third amended complaint, substituting new individual defendants for fictitious Doe defendants named in the original complaint pursuant to Civil Procedure Code section 474, does not relate back to the date of filing of the original complaint and thus the statute of limitations bars Herrera's claims. Under the relation-back doctrine, an amendment adding a previously unnamed defendant relates back to the date of the original complaint if it: (1) rests on the same general set of facts as the original complaint; and (2) refers to the same accident and same injuries as the original complaint. (*Smeltzley v. Nicholson Mfg. Co.* (1977) 18 Cal.3d 932, 936-937; see *Barrows v. American Motors Corp.* (1983) 144 Cal.App.3d 1, 7 (*Barrows*) ["So long as the amended pleading relates to the same general set of facts as the original complaint, a defendant sued by fictitious name and later brought in by amendment substituting his true name is considered a party to the action from its commencement for purposes of the statute of limitations."].) The rule applies even where the amendment sets out a different legal theory or states a different cause of action. (*Smeltzley v. Nicholson Mfg. Co.*, *supra*, 18 Cal.3d at p. 936; see *Austin v. Massachusetts Bonding & Insurance Co.* (1961) 56 Cal.2d 596, 602 [where original complaint initially designated defendant

---

[13] Nothing in this discussion is meant to state an opinion on whether a total failure to provide medical care might violate the Eighth Amendment prohibition on cruel and unusual punishment.

by a fictitious name and amended complaint substituted defendant's true identity, amended complaint was held to relate back to original where it alleged new legal theories based on the same facts].)

Respondents contend that only where the plaintiff was "ignorant of the name" of the defendant may he identify the defendant initially by a fictitious name under Code of Civil Procedure section 474 and subsequently have the claims against the defendant be deemed to relate back. (Civ. Proc. Code, § 474.) "The omission of the defendant's identity in the original complaint must be real and not merely a subterfuge for avoiding the requirements of section 474." (*Woo v. Superior Court* (1999) 75 Cal.App.4th 169, 177.) Respondents contend that Herrera obviously was not ignorant of the identity of Hebron when he filed his original complaint, since his original tort claim identified Hebron as a witness to the damage and alleged that "Camp staff and Director [i.e., Hebron] had prior knowledge of the snake's presence."

We disagree with respondents that the fact that Herrera knew Hebron's name and identified him in the tort claim disqualifies him from later substituting Hebron for one of the Doe defendants named in the original complaint. "There is a strong policy in favor of litigating cases on their merits, and the California courts have been very liberal in permitting the amendment of pleadings to bring in a defendant previously sued by fictitious name." (*Barrows*, *supra*, 144 Cal.App.3d at p. 7.) Civil Procedure Code section 474 has been liberally interpreted such that "[e]ven a person whose identity was known to the plaintiff when the action was filed may be brought in under section 474 as a 'Doe' defendant if the plaintiff was initially unaware of that person's true relationship to the injuries upon which the action was based." (*Miller v. Thomas* (1981) 121 Cal.App.3d 440, 444-445; see 4 Witkin, Cal. Procedure (5th ed. 2008) Pleading, § 478, p. 606.)

In this case, although the original claim alleged that Hebron had prior knowledge of the snake's presence at camp, the complaint alleges that Hebron is liable under a different theory of liability – namely, failure to inform and train camp employees under his supervision with respect to the camp policy on snakes. Thus, Herrera was entitled to initially list Hebron as a Doe defendant and then identify him by name later once he became aware of Hebron's "true relationship to the injuries upon which the action was based." (*Miller v. Thomas*, *supra,* 121 Cal.App.3d at p. 445.)

Respondents also contend that Herrera delayed the substitution of the Doe defendants after learning their identities and ask that we affirm the dismissal of Herrera's complaint based on the principal that "[u]nreasonable delay in filing an amendment after actually acquiring such knowledge [of a defendant's identity] can bar a plaintiff's resort to the fictitious name procedure." (*Barrows*, *supra*, 144 Cal.App.3d at p. 8.) However, the defendant bears the burden of establishing that the plaintiff knew of a Doe defendant's identity and the facts suggesting his liability earlier than claimed by the plaintiff. (*Breceda v. Gamsby* (1968) 267 Cal.App.2d 167, 179.) Moreover, the defendant "must show not only that the plaintiff was dilatory but also 'that defendant suffered prejudice from any such delay.'" (*Barrows*, *supra*, 144 Cal.App.3d at p. 9 [defendant must show "specific prejudice" and cannot rely on general prejudice presumed from the policy of the statute of limitations].) In this case, respondents have failed to allege any prejudice as a result of the delay in naming the individual defendants. Thus, we conclude that the trial court did not abuse its discretion in permitting Herrera to substitute named individuals for the Doe defendants. (See *A.N. v. County of Los Angeles* (2009) 171 Cal.App.4th 1058, 1067 [applying abuse of discretion standard of review to challenge to plaintiff's substitution of Doe defendants].)

DISPOSITION

The order sustaining the demurrer as to respondents Mikell Ballou and Samuel Rodriguez is reversed, as the complaint adequately states a cause of action against each of them under section 840.2, for liability for a dangerous condition of public property. We also reverse the order sustaining the demurrer as to respondent supervisors Randy Hebron, Tyrone Perry, Charles Hartacych, and Marcila Chapman, as to whom the complaint states a claim for negligent training regarding snake protection policies.

We affirm the order sustaining with prejudice the demurrer as to respondents Burt Todd, Robert Taylor, Richard Saenz, Deputy Barlow, Jack Moreno, and Francesca Jones. The demurrer was properly sustained as to Gerald Espinoza, but leave to amend is granted under the theory of liability for a dangerous condition so that he may have the opportunity to plead facts demonstrating that Espinoza had the authority and responsibility as well as the immediately available means to warn Herrera about the snake and/or to order him to move away from the area.

The parties shall bear their own costs on appeal.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

WILLHITE, J.

We concur:

EPSTEIN, P. J. SUZUKAWA, J.